THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

Vol. IX, No. 4 JANUARY, 1930 PAGES 73-96

COMPLETE NUMBER 179

Published by

THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

A BY-PRODUCT OF THE STOCK MARKET STORM

In the wake of the recent storm in the stock market came a test that the larger transfer agents of corporate stock will not soon forget. The number of new stock certificates that had to be issued each day was not merely doubled or trebled —it was multiplied, in the case of some stocks, by ten times and more. For example Radio Corporation of America, the normal day's transactions in which require about four hundred new certificates, jumped suddenly to requiring more than four thousand certificates per day, and that kept up for weeks! Many one-hundred-share certificates were split up into twenty and more individual certificates, some for one or two shares each. As under the rules of the New York Stock Exchange delivery of stock sold must be made within twenty-four hours after sale so it is a rule of custom, made necessary by the exigencies of stock sale and purchase transactions and rigidly enforced, that a new, registered, certificate shall be ready for the purchaser's agent within twenty-four hours after the old certificate has been presented for transfer to the transfer agent. Never was a better demonstration of the flexibility and smooth-running efficiency of the stock transfer department of The Corporation Trust Company, which, as transfer agent not only for Radio but many other of the active listed stocks, had to rise, unwarned, to this unparalleled emergency and did so without a moment's delay.

Kenneth Kingsley

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter, before mailing, each copy will be punched to fit the binder.

Contents for January

Federal Income Tax Reductions

The reduced Federal corporation and individual normal income tax rates recently established by the Congress are made applicable to and are restricted to the tax on the income for the calendar year 1929. Generally, this means that the new, lower, rates will be applied at once to the income for the entire calendar year 1929 for which the one return is to be made on or before March 15, 1930 (tax payable in the usual quarterly installments), since most income tax payers make their returns on a calendar year basis. However, those who are entitled to make return on a fiscal year basis will receive, in general effect, the benefit of the reduced rates to the extent of income attributable to that portion of 1929 that falls within the fiscal years for which returns have been or will be made in 1929 and 1930, or in 1930 and 1931, under the proportioning provisions of sections 14 and 105 of the Revenue Act of 1928. In the case of a return heretofore made with tax computed under the old rates by a taxpayer on a fiscal year basis for a fiscal year ended in 1929, credit against future installments, or credit against any tax or installment thereof then due, or a refund, will be in order to the extent of any overpayment. The new rates are shown here:

Corporation tax and insurance company tax: 11% instead of 12%.

Individual (including nonresident alien) normal tax: ½ of 1%, 2%, 4%, instead of 1½%, 3%, 5%, respectively.

Withholding at source: ½ of 1%, 4%, 11%, instead of 1½%, 5%, 12%, respectively.

It is estimated by the Treasury Department that the reduction in the tax rates for the calendar year 1929 will result in a loss to the Government in receipts for its fiscal years ending June 30, 1930, and June 30, 1931, of approximately $160,000,000. There will be a corresponding saving to taxpayers. Generally speaking, each taxpayer will benefit except one whose entire income, or that in excess of the personal exemption to which he is entitled for normal tax purposes, is derived from dividends. In theory, at least, there was set aside from 1929 accrued or received income, from time to time, estimated amounts the aggregate of which would be equivalent to the amount of the income tax to be paid for 1929. So much of such reserved or tagged amounts as is now no longer necessary to meet the 1929 tax obligation by virtue of the rate reductions, is released for employment otherwise. Whether reserved and tagged or not, and regardless of the character or source of the fund or funds out of which the 1929 tax is satisfied, the financial position of the taxpayer is bettered by the amount of his tax reduction. In the case of corporations there is usually an actual setting up of a reserve for income tax for the current year; 8⅓ per cent of such reserve is now freed of its burden and is available for immediate distribution to shareholders or for commingling with other undivided profit or surplus funds. $160,000,000 added to the purchasing or investing power of the people of the country is a substantial contribution in the concerted move for continuance without abatement of our prosperity.

Domestic Corporations

Arkansas.

General Corporation Act of 1929 invalid. Act 184, Laws of 1929, intended to be "an act to provide for the formation of corporations, the regulation and control of corporations, and for other purposes," carries no enacting clause. In answer to an inquiry relative to the validity of the act, thus defective, the Attorney General of Arkansas, Hon. Hal. L. Norwood, under date of October 12, 1929, says: "Replying to your letter I beg to state that Act 184 of 1929 has no enacting clause, and is, therefore, invalid."

California.

Service of summons on corporation by delivery to one, as secretary, who had resigned such position is ineffective. Service of process here was attempted to be made on a corporation by delivering a copy of the summons to one who had been secretary and a director of the corporation but who had tendered his resignation as such officer and director about a year before, the resignation having been by mail. The California Court of Appeal, Second District, Division 1, granting a writ of prohibition to prevent further action in a certain proceeding, holds the service ineffective—as if made on a stranger, saying that the resignation was complete and effective even though, apparently (the record is silent), it had not been formally accepted and a successor or successors elected, and even though the by-laws provide, as they do, that officers and directors are to hold office until their successors are elected and have qualified. Security Investors Realty Co. vs. Superior Court, etc., et al., 281 P. 709. Ward Chapman and William Ellis Lady, both of Los Angeles, for petitioner. Pacht, Pelton & Warne and William W. Leavitt, all of Los Angeles, for respondents.

Delaware.

Charter provision restricting sale by stockholders of corporation's stock upheld. The charter and by-laws of the Delaware corporation here involved provide that a holder of Class B common stock desiring to sell his stock shall first offer it to the corporation at a price mutually agreed on or determined by appraisers (one named by each party, the two selecting a third), such latter valuation to be exclusive of any good will value. If the corporation elects not to purchase sale may be made to third parties. The stock is largely held by employees; the purpose of the restricting provision is to assure a continuance of the policy of employee-ownership. On ceasing to be an employee a stockholder must on request offer his stock to the corporation and on failure to comply with such request dividends stop on his shares. The stated restrictions and conditions are printed on the stock certificates. A stockholder sold her stock to a third party without having given the corporation an opportunity to recapture it. The pur-

chaser presented the certificate with request that the shares be transferred to him and a new certificate issued to him in his name. This the corporation refused to do. The action is to compel transfer. The complainant advances the propositions that the law looks with disfavor on restraints on alienation, that the provision excising good will value is in substance a most effective restraint, that such charter or by-law provisions must have direct statutory authority and that there is none such, that the provisions are unreasonable and arbitrary, and that the adoption of the provisions was an attempt to insert into corporate structure the characteristics of a partnership. The Court of Chancery of Delaware (New Castle) finds against the complainant holding the questioned provisions valid in all respects: such restraint on alienation as exists is reasonable and so permissible; the excision of good-will value is embodied in and governed by the contract of original purchase (subscription); Section 19 of the General Corporation Law gives to a corporation the right to purchase, hold, sell, and transfer its own stock and so the right to contract thereunto, and the provisions in question are a part of such a contract to which the stockholder is a party and by the terms of which he is bound; that there is no objection to inserting into corporate structure partnership characteristics if consistent with the principles of corporate entity. Lawson vs. Household Finance Corporation, 147A. 312. William Prickett, of Wilmington, for complainant. E. Ennalls Berl, of Ward & Gray, of Wilmington, and Frank R. Hubachek, of Minneapolis, Minn., and F. B. Hubachek, of Chicago, Ill., for defendant.

Federal.

Unfair competition; trade names. This is an aftermath of the proceedings against the Hudson Bay Fur Company, a dealer in furs and blankets, wherein an injunction was granted restraining the company from the further use of that name, because of the manifest injustice and unfairness attendant on such use, on petition of the old Hudson Bay Company, i.e., The Governor and Company of Adventurers of England Trading Into Hudson's Bay which dates back to 1670 (33 F. (2d) 801). In conformity with the decree the company proposed a new name, "Hudson Furriers, Incorporated," under which to conduct its business. The company claimed that in view of the fact that it had expended large amounts of money in advertising its business under the name Hudson Bay Fur Company it would be a great hardship on it to prohibit the use of the word Hudson as part of its business name. The United States District Court, District of Minnesota, says that the fact that the original use was wrongful nullifies the argument entirely and that the circumstance that the sums expended in advertising were large only serves to magnify the wrong; that the world is wide, that good non-trespassing and non-deceptive names for defendant's business are many, and that some such name should be chosen; and that "In the face of the decree which has been entered in this case, the defendant has continued to use and advertise under the proscribed name for quite too long a time. The matter should now

be promptly closed, and changed conditions, conforming thoroughly to the spirit of the decree, should be inaugurated without delay." The Governor, etc. vs. Hudson Bay Fur Company, U. S. Daily, Dec. 4, 1929, page 6 (not yet officially reported).

Unfair competition; trade name. In a proceeding by the Federal Trade Commission the manufacturer and a distributor of "Duraleather," a product in imitation of leather, were ordered to cease and desist from using the term "Duraleather" as a trade-name on imitation leather, on their stationery, in their advertisements of the product, and "from using the word leather or any other word or combination of words as to import or imply that such products are real leather." On petition to the United States Circuit Court of Appeals, Third Circuit, to review the order, the order, slightly modified, is affirmed. (The modification is to the effect that if in complying a new and acceptable trade name is adopted, the use of the word "Duraleather" may be continued for six months after the Commission has approved the new manner and form of designation;—this because "The relinquishment of this name, now made imperative, necessarily will be attended with some loss, which should not be greater than necessary to fulfill the Commission's order.") From 1915 to 1924 the name of this imitation leather was "Duraleather," simply. In 1924 the phrase "The Durable Leather Substitute" was added "for some reason not disclosed," the word "Duraleather," however, being always prominently displayed on a line by itself the additional phrase appearing on a line below in much smaller type. Masland Duraleather Co., et al. vs. Federal Trade Commission, 34 F. (2d) 733. Robert T. McCracken and C. Russell Phillips, both of Philadelphia, for petitioners. Robert E. Healy, Edward J. Hornibrook, and Adrien F. Busick, all of Washington, D. C., for respondent.

Iowa.

Stockholder has right to inspect corporation's stock records and to examine its books of account. Action is in mandamus to compel the officers of a corporation to permit a minority stockholder to inspect and copy from the corporation's stock records, ledger, and transfer books, and to examine the books and records showing its financial condition. The Supreme Court of Iowa affirms the decree below granting the prayed for relief. The court points out that the Iowa statutes (Sec. 8384 et seq., Code 1927) provide for the furnishing of a stockholders list to a stockholder on his written request, and the keeping of complete stockholder records and the inspection thereof by a stockholder. The court then states that the majority view in the United States is that a stockholder as one of the equitable owners of a corporation's assets and for whom as agents the officers are acting in a fiduciary capacity has the right to inspect the books and records of the corporation, and, without showing any specific purpose. It is also said that there is no presumption in an action to compel, as here, that a stockholder seeking information does so with a bad motive, or with intent to inflict injury on the corporation, and that such motive or intent is a

matter of defense to be pleaded and proved. Ontjes vs. Harrer et al., 227 N. W. 101. R. F. Clough, of Mason City, for appellants. F. A. Ontjes, of Mason City, and W. G. Henke, of Charles City, for appellee.

Missouri.

Rights of pledgor and pledgee of stock, respectively, to dividends. In the course of the opinion in this case (it is not essential to state the basis of the action) the Supreme Court of Missouri, Division No 2, says: "The right to receive a stock dividend, like the right to be paid a cash dividend, is an incident of, and dependent upon, ownership of stock in the corporation. The general rule is that the pledgee of stock is entitled to cash dividends thereon for which he must account to the pledgor. (Missouri cases cited.) The same rule is applicable to stock dividends. The value of outstanding stock is determined by the capital and surplus of the corporation. Issuance of a stock dividend lessens the value of such outstanding stock. To permit the pledgor to receive and appropriate a stock dividend on his stock, held by another as collateral to secure an indebtedness, is to permit the pledgor wrongfully to depreciate the security held by the pledgee. Hence the pledgor cannot maintain an action for the failure or refusal of the corporation or its managing officers to declare and issue to him a stock dividend on his stock while it is thus pledged as security for his debt." Whetsell vs. Forgey, et al., 20 S. W. (2d) 523. May & May, of Louisiana, and Ed. S. Jones and George N. Davis, both of Macon, for plaintiff. Nat M. Lacy, of Macon, and Hostetter & Haley, of Bowling Green, for certain defendants. J. W. Matson, of Louisiana, for another defendant.

Nebraska.

Corporation is responsible for fraudulent misrepresentations made by agent in selling its share stock. Action is for recovery of amount of subscription to stock in a corporation on the ground of misrepresentation. Judgment below for plaintiff is reversed by the Supreme Court of Nebraska and a new trial ordered; however, in connection with defendant's contention that it had not authorized its agent to make any misrepresentations and had no knowledge that such had been made and so was not liable in an action for deceit or fraud of the agent, the court says that the corporation had employed the agent to sell its stock, that the natural inquiry of a prospective customer or subscriber would be directed to the various factors tending to establish value, that to give the facts prompted by the questions was incumbent on the salesman and strictly in the line of his duties, and that the company is responsible for any misrepresentation in an action for fraud and deceit. Jacobson vs. Skinner Packing Co., 226 N. W. 321.

New Jersey.

Petition for appraisers by stockholder dissenting to a merger. The Court of Errors and Appeals of New Jersey affirms the judgment

of the Supreme Court in this action on a petition of a dissenting stockholder of one of two merging corporations for the appointment of appraisers to determine the market value of his shares at the time of merger, to the end that he be paid an amount equal to such appraised value in exchange for his stock (sections 108 and 108a of the General Corporation Act). The Supreme Court had affirmed the order of the Circuit Court appointing appraisers. We stated in the digest of the Supreme Court's decision appearing in THE JOURNAL for February, 1929, page 343: "One reason assigned against the action of the Circuit Court is that in the application it was not alleged that the petitioner attended the stockholders meeting and did not vote in favor of the merger. The court said: 'The statute provides an informal proceeding in matters of this character, which does not require an adherence to the strict rules of pleading. If the petitioner by not attending the stockholders meeting and voting in favor of the merger estopped himself from asserting, or waived, any right to the relief afforded by the statute, such fact could have been advanced at the hearing as a reason for not appointing the receivers.'" The Court of Errors and Appeals agrees "that the proceeding is properly described as informal in character" but feels that from the averment that the petitioner was present at the meeting and dissented a reasonable inference is to be drawn that he expressed his dissent by an adverse vote and not that he voted in favor of the merger;—all that the statute requires to establish his status is that he shall not have voted in favor of the merger and shall have dissented. Southern Power Co. et al. vs. Cella et al. (also Great Falls Power Co., vs. Andrus), 147 A. 449. William T. Vanderlipp, of Newark, for appellants. Frank Pascarella, of Emerson, for respondents.

New York.

Stockholders are not joint adventurers. A corporation is the owner of certain patent rights. A second corporation desired a license for the use of the patented processes. By agreement resulting from negotiations a third corporation was organized to which the exclusive right and license to the processes, in specified territory, was granted, one third of the stock of the licensee corporation being issued to the licensor corporation in lieu of royalties, the other two-thirds being issued to the second corporation. By the terms of the agreement neither corporate stockholder was to dispose of its stockholdings without the consent of the other until certain specified net earning conditions became existent, such restriction however not to continue beyond June 30, 1929. Action is to enjoin the second corporation from selling its stock holdings in the licensee corporation as it has proposed to do (subsequent to June 30, 1929). It was urged that the two stockholding corporations had by their agreement created a joint enterprise in which they were coadventurers thus establishing a fiduciary relationship under which each owes to the other high duties of good faith akin to those existing among members of a copartnership. The New York Supreme Court, New York County, holds against this contention, saying that

the two corporations are no more than majority and minority stockholders of the third, that no joint venture came into existence, that even though it be conceded that a fiduciary relation once existed it was time limited, and that in any event after the fixed date either party is free to dispose of its stock without the consent of the other. Motion for temporary injunction denied. Claude Neon Lights, Inc. vs. Federal Electric Co., Inc., et al., 236 N. Y. Sup. 692. Alfred P. W. Seaman, of New York (Julius Henry Cohen, of New York, of counsel), for plaintiff. Phillips, Mahoney, Leibell & Fielding, of New York (Jeremiah T. Mahoney, of New York, of counsel), for defendant Claude Neon Federal Company. Shearman & Sterling, of New York (Guy Cary, Walter K. Earle, W. Deering Howe, and Charles L. Craig, all of New York, of counsel) for defendants.

Nova Scotia.

The president and director of a company is not in a fiduciary relationship with the stockholders. Action is for specific performance of an agreement to sell shares of stock in a company, and for damages. The plaintiff prevails—for damages, specific performance being impossible. One of the defendant's contentions was that the contract of sale with the plaintiff was not binding since the latter was the president and a director of the company the stock of which was covered by the agreement, "and as such he occupied a fiduciary relation to the shareholders and owed a duty to them to disclose all information that might affect the value of the shares." The Nova Scotia Supreme Court is unable to agree with this view and refers to Lewin on Trusts, 13th Ed., p. 225; Percival vs. Wright [1902], 2 Ch. 421; Burland vs. Earle [1902], A. C. 83. Duff vs. Rudolph and Lunenburg Gas Co. [1929], 4 D. L. R. 813. J. G. A. Robertson, K. C., for plaintiff Duff. W. G. Ernst, for Rudolph. G. McL. Daley, K. C., for Lunenburg Gas Co.

Ohio.

Filing of articles of incorporation with Secretary of State, without more, insufficient to relieve incorporators of personal liability for negligence of "corporation". Action is for damages on account of the alleged negligence of the defendants, incorporators of a corporation in connection with the operations of which, as a corporation, the alleged negligence occurred. Certain of the defendants filed articles of incorporation with the Secretary of State of Ohio which were duly recorded by him; another defendant became associated with the others as general manager of the business which the "corporation" began to conduct. Before the occurrence complained of, so it is alleged, no stock was issued, no capital was paid in, no first meeting of stockholders was held, no regulations (by-laws) were adopted, and no board of directors was elected. It is alleged that the business at the time of the accident was being carried on by the defendants as partners. The defendants demurred to the complaint contending that the action should

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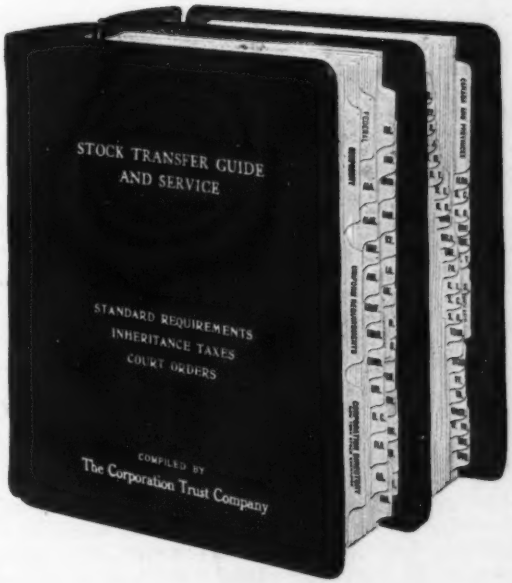

be brought against the "corporation;" that such existed by virtue of G. C. §8623-4 and §8623-7 which provide, respectively, that three or more persons "may become a corporation" by filing articles of incorporation with the Secretary of State, and that on the filing of the articles the incorporators by the name stated therein shall constitute a body corporate. The Common Pleas Court of Franklin County (Ohio) overrules the demurrer saying that if the allegations are proved the defendants, as joint tort feasors, and not the corporation, have committed the negligent acts, and as individuals are the proper parties defendant. The court calls attention to G. C. §8623-55 vesting corporate control in a board of directors and says that "there is no other way in which a corporation may function," and to G. C. §8623-13 which provides that no corporation shall commence business until the amount of capital stock specified in the articles as the amount of capital with which it will commence business has been paid in. Stimmel vs. Beck, et al., Vol. 27 (N. S.) Nisi Prius Reports, page 454. Conn & Benoy, for plaintiff. Stevenson & Stevenson, for defendants.

Dissolution of corporation on petition of stockholders to court. The Ohio statutes provide that when holders of a majority of the shares entitled to vote on a proposal to dissolve a corporation (when the present action was brought the provision read "when stockholders representing not less than one-third of the capital stock") deem it beneficial to the interests of the stockholders that the corporation be dissolved they may apply by petition to the Common Pleas Court for its dissolution. If the court finds that any one of certain conditions exist, one being that dissolution will be beneficial to the interests of the shareholders, judgment of dissolution will be entered. In the instant case the Court of Appeals of Ohio, Cuyahoga County, affirms the judgment of the court below for plaintiff petitioners decreeing a dissolution, and says: "In interpreting the phrase 'will be beneficial to the stockholders' used in the Code, no reference can be had to any particular stockholder. Benefits accruing to some stockholders and not to others must be eliminated. Such interpretation requires the consideration of only those things that affect equally all stockholders, as such. This is reasonable, because, in a dispute which arises between minority and majority stockholders, it is most often the case that what is harmful to the minority proves beneficial to the majority, as individuals." Schmitt Realty & Inv. Co. et al. vs. Monks et al., 168 N. E. 213. Henderson, Quail, McGraw & Morgan, of Cleveland, for plaintiffs in error. Bernon, Mulligan, Keeley & LeFever, of Cleveland, for defendants in error.

Ontario.

Meaning of phrase "for four successive weeks" in connection with notice by publication. It is held here, by the Ontario Supreme Court, Appellate Division, in connection with a statutory provision (Lakes and Rivers Improvement Act, R. S. O. 1927, C. 43, §§52, 53) calling for publication in a newspaper of a notice "once a week for four successive weeks" before a date stated, that four weeks (twenty-eight

days) notice must be given, and that when as here, publication being required prior to the first day of March once a week for four successive weeks, notice was published first on Saturday, February 9, and then on Saturday, Feb. 16, on Saturday, Feb. 23, and on Wednesday, February 27, such does not meet the statutory requirement. Re Kyro River Improvement Co., Ltd., [1929] 4 D. L. R. 610. H. F. Parkinson, K. C., for appellant. H. E. Langford, for respondents.

Foreign Corporations

Kansas.

Service of process on foreign corporation by service on secretary of state. A foreign corporation seeking authority to do business in Kansas is required in its application to consent that service of process on it may be made by service on the secretary of state. In the instant case, an action for damages for personal injuries, the accident causing the injuries and for which the defendant foreign corporation is held to be responsible occurred prior to the date of qualification and consent for service on the secretary. Service was made on the secretary of state after consent and qualification. The defendant contended that as the cause of action arose at the time of the accident and consent to service on the secretary had not then been given no service of summons in the action could be had on it on the consent afterwards filed. The Supreme Court of Kansas, affirming the judgment below, says that the statutory provision is broad enough to cover any action whether the right to prosecute it accrues before or after the defendant has filed its consent. Wait vs. Morrison et al., 281 P. 906. J. B. McKay, of Eldorado, for appellant. W. N. Calkins and Charles W. Steiger, both of Eldorado, for appellee.

Oregon.

License fee requirements in event of appointment of additional state agents by foreign corporations (fire insurance companies). The decision of the Supreme Court of Oregon in this case was digested in the June, 1929, JOURNAL, page 447. By state law a foreign fire insurance company may appoint an agent in each city, town, or village (fee $2); in a city of 50,000 or more inhabitants an additional agent may be named (same fee); additional agents may be appointed on payment of an annual license fee of $500 per agent. Action was brought by an individual whose application to the Insurance Commissioner for a license as an (additional, $500 class) agent, first made by him and then by the company, was refused since the application was not accompanied by the $500 fee. The court to which appeal was made from the commissioner's decision by the individual, the company not joining, ordered that the license be issued holding that the $500 license provision was an unlawful interference with the rights of the individual and of the company, respectively. The state Supreme Court reversed saying that the provision for a heavy license fee for an "addi-

tional" agent was a valid legislative requirement of a foreign insurance company in the conduct of its business in Oregon. 269 P. 236. 126 Or. 588. The United States Supreme Court, on November 25, 1929, in affirming the judgment says that as the requirement is one imposed on the foreign corporation there is, of course, no interference with any rights of the individual, and that as the company itself is not insisting that the statute constitutes an impairment of its own right and as there was no assignment of error challenging the validity of the statute on that ground that question, which the appellant sought to raise in argument, is not before the court for decision. Herbring vs. Lee, as Insurance Commissioner (not yet officially reported).

Texas.

Courts of a state may not by garnishment or otherwise in any way incumber stock in a foreign corporation. Citing many cases and authorities the Court of Civil Appeals of Texas (Waco), reversing a judgment against a foreign corporation garnishee (such solely because the foreign resident defendant in the main suit, against whom judgment went by default and attachment was returned "no property found," is alleged to be a shareholder therein), says here: "It seems to be the universal holding of the courts that the situs of corporate stock is in the state which gave the corporation existence, and that the courts of one state cannot, by garnishment, attachment, or otherwise, impound, sell, transfer, or in any way incumber corporate stock in a foreign corporation." B. & A. Drilling Co. vs. Norton, 20 S. W. (2d) 413. C. H. Machen, of Mexio, and C. S. & J. E. Bradley, of Groesbeck, for appellant. Walters & Kidd, of Mexia, and Williamson & McDonnell, of Waco, for appellee.

Taxation

California.

Gross receipts tax on carriers of freight by motor vehicles between fixed termini held valid. California imposes a tax, authorized by its constitution, of 5 per cent of their gross receipts, in lieu of all other taxes, on common carriers engaged in transporting freight by motor vehicles for hire along public highways between fixed termini and over regular routes within the state. Other freight carriers, common and private, by motor vehicles, are subjected to different, and, it was alleged, less burdensome taxation. The United States Supreme Court, on November 25, 1929, after saying, in effect, that a state has broad powers of classification for taxation purposes finds no undue discrimination in the classification made by the taxing statute here involved and affirms the decree below dismissing the bill asking that the questioned state constitutional and statutory provisions be declared violative of §1 of the 14th Amendment of the Federal Constitution and that the state authorities be forbidden, by injunction, from attempting to enforce payment. Bekins Van Lines, Inc., et al. vs. Riley, as State Controller (not yet officially reported).

Idaho.

Tax on shares of stock of foreign corporation though shareholders are nonresidents of the taxing state held valid. The tax here involved is that assessed against foreign corporations, licensed to do business in Idaho, engaging in or using their capital in competition with moneyed capital invested in shares of stock of any state or national bank, on their shares of stock according to the ratio that investments and loans within the state bear to total investments and loans. Plaintiffs are insurance companies, loan and trust companies, and building and loan associations. To the extent of the application of the taxing statute to foreign building and loan associations the law is held invalid because of denial of equal protection of the laws since domestic building and loan associations are exempt. Otherwise the law is upheld. One contention (because of which this digest is here included) was that since the tax is on the shares of stock (intangible personal property) most of which are owned by nonresident shareholders and have their situs at the domiciles of the owners Idaho is without power to impose it. The United States District Court, District of Idaho, S. D., while conceding that the state's taxing power is limited to persons and property within the sphere of its territorial limits says that as plaintiffs grant the legislative attempt to apply to them and their stockholders the identical system of taxation to which domestic corporations of similar character, and their stockholders, are subject, and as foreign corporations by entering the state and transacting business therein have impliedly and are deemed to have consented that, as provided by the state constitution, they shall not have or be allowed to exercise or enjoy any greater rights or privileges than those possessed or enjoyed by domestic corporations of the same or similar character, the contention is not sound. National Savings & Loan Ass'n vs. Gillis, Atty. Gen. of Idaho, and others vs. same, 35 F. (2d) 386. Alexander Winston, of Spokane, Wash., and Hawley & Hawley, of Boise, for named plaintiff. Oliver O. Haga, McKeen F. Morrow, J. L. Eberle, and Richards & Haga, all of Boise (E. D. Ham, of Spokane, Wash., and Martin & Martin, of Boise, of counsel), for plaintiffs Vermont Loan & Trust Co., and New World Life Ins. Co. W. D. Gillis, Atty. Gen. of Idaho, and Fred J. Babcock, Asst. Atty. Gen., for defendant.

Oklahoma.

Foreign corporation annual license fee law provision held unconstitutional. The Oklahoma law provides for corporation annual license fees as follows: domestic corporation—50c for each $1,000 of authorized capital stock; foreign corporation—$1 for each $1,000 of its capital invested in its business in the state. "The words 'capital invested in its business' as used in this Act shall be construed to mean all the assets including money and property, tangible and intangible, used or employed from year to year by such corporation in the transaction of its business in this state." The United States Circuit Court of Appeals, Eighth Circuit, affirming the judgment below, holds the tax invalid as

applied to foreign corporations in that it violates the Fourteenth Amendment of the Constitution pledging equal protection of the laws. The court says that after a foreign corporation has been admitted to do business in a state it must stand on an equality and be classified with domestic corporations and that under the Oklahoma taxing statute "Foreign corporations are not classified with domestic corporations of the same kind. The fee exacted of one is to be ascertained in a different and unequal way from the fee exacted of the other." Sneed, Treasurer vs. Shaffer Oil & Refining Co., and three other cases, 35 F. (2d) 21. Fred Hansen, Asst. Atty. Gen. (Edwin Dabney, Atty. Gen. on the brief), for appellant. S. B. Flynn, of Oklahoma City (G. Earl Shaffer, of Tulsa, and Rainey, Flynn, Green & Anderson, of Oklahoma City, on the brief), for the named appellee.

Virginia.

If application of the mobilia sequuntur personam rule will result in inescapable and patent injustice, whether through double taxation or otherwise, the fiction must yield. A Maryland (Baltimore) Trust Company, as trustee, is holding in trust for the benefit of two minors, bonds and stock of sundry corporations, one-half of the principal, and accumulated interest, to be paid to each on his reaching a certain age. The trustor, a resident of Virginia, reserved the power of revocation but died in the year of the creation of the trust, without exercising the power. The two beneficiaries of the trust are domiciled in Accomac County, Virginia, where administration of the trustor-decedent's estate was had. The Trust Company has regularly paid taxes demanded by the city of Baltimore and the state of Maryland on the trust corpus. An assessment for taxation in Accomac County, Virginia, on the whole corpus of the trust estate, levied against the Maryland trustee, was sustained by the Virginia Special Court of Appeals. The United States Supreme Court reverses, saying that the trust securities have no legal situs for taxation in Virginia unless, the cestuis que trust being the real owners of the trust funds, the fiction mobilia sequuntur personam controls; that whereas, ordinarily, the court recognizes the fiction "the general rule must yield to established fact of legal ownership, actual presence and control elsewhere and ought not to be applied if so to do would result in inescapable and patent injustice whether through double taxation or otherwise"; that, as here, "where the possessor of legal title holds the securities in Maryland, thus giving them a permanent situs for lawful taxation there, and no person in Virginia has present right to their enjoyment or power to remove them, the fiction must be disregarded"; and that "It would be unfortunate, perhaps amazing, if a legal fiction originally invented to prevent personalty from escaping just taxation, should compel us to accept the irrational view that the same securities were within two states at the same instant and because of this to uphold a double and oppressive assessment." Mr. Justice Stone, concurring in the result in a separate opinion in which Mr. Justice Brandeis concurs, expresses the view that seemingly the question whether or not a Virginia tax on the beneficiaries

measured by their equitable interests would lie, not being presented by the record, ought not to be decided and intimates that were the question before the court he would answer it in the affirmative. (In the controlling opinion it is said: "We need not make any nice inquiry concerning the ultimate or equitable ownership of the securities or the exact nature of the interest held by the sons. In the disclosed circumstances, we think that is not a matter of controlling importance.") Mr. Justice Holmes thinks the judgment should have been affirmed. He says: "The equitable owners of the fund were in Virginia and I think they could be taxed for it there. I do not understand that any merely technical question is raised on the naming of the trustee instead of the cestuis que trust as the party taxed." Safe Deposit & Trust Co. vs. Virginia (November 25, 1929—not yet officially reported).

West Virginia.

Imposition of foreign corporation license tax on basis of authorized capital stock is invalid but a tax rate applicable to foreign corporations greater than that applying to domestic corporations is unobjectionable. The West Virginia statutes provide for an annual license fee or franchise tax on domestic corporations based on authorized capital stock at graduated scale rates. In the case of a foreign corporation holding property and doing business in the state the law provides that the annual privilege tax shall be based on that proportion of the capital stock (the word "authorized" not being used) represented by its property owned and used in the state such tax to be first computed at the same graduated scale rates as applicable to domestic corporations and then increased by 50%. The state authorities have construed this to mean that the proportion having been determined it shall be applied to the authorized capital stock. The West Virginia Supreme Court of Appeals holds this to be error and that the rates should be applied to the proper proportion of the issued capital stock only (relying on Air-Way Elec. App. Corp. vs. Day, 266 U. S. 71), as otherwise the equal protection clause of the Fourteenth Amendment to the United States Constitution, as among foreign corporations subject to the tax, would be violated. The court holds further (relying on Cheney Bros. Co. vs. Mass., 246 U. S. 147), that the 50% increase in the rates in the case of foreign corporations is not violative of the Federal Constitution since (so the court says) there is no provision thereof requiring that foreign corporations as a class be not subjected to a higher license tax than is imposed on domestic corporations as a class, at least in the case of a particular foreign corporation if the law imposing such greater tax was in force, as here, at the time of the admission of the corporation to do business in the state. State of West Virginia vs. Azel Meadows Realty Corporation, et al., Nov. 5, 1929, United States Daily, Nov. 15, 1929, page 11 (not yet officially reported).

Delaware Corporations Organized.

534 corporations were organized under the laws of Delaware from November 21 to December 20, as against 545 for the preceding 30-day period, and 620 for the corresponding period of one year ago.

Some Important Matters for January and February

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Application for Permit to Do Business, due February 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Franchise (Income) Tax Return due on or before March 15 for calendar year or within two months and fifteen days after close of fiscal year.—Domestic and Foreign corporations.

COLORADO—Annual Report due within 60 days after January 1.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report on or before February 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

ILLINOIS—Annual Report due between February 1 and March 1.—Domestic and Foreign Corporations.

INDIANA—Annual Capital Stock Report due on or about March 1.—Foreign Corporations engaged in manufacturing.

Annual Report and License fee of foreign finance companies due February 1.—Foreign Corporations engaged in the business of financing sales.

KANSAS—Annual Report and Franchise Tax due between January 1 and March 31.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

LOUISIANA—Capital Stock Statement and Tax due on or before March 1.—Foreign Corporations.

Annual Report due on or before February 1.—Domestic Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MASSACHUSETTS—Annual Report of Information for Income Tax due between January 1 and March 1.—Domestic and Foreign Corporations.

MISSOURI—Return of Information at Source due on or before February 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

MONTANA—Annual Report of capital employed due between January 1 and March 1.—Foreign Corporations.

Annual Return of Net Income due between January 1 and March 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax based on Income of Business Corporations due on or before January 1.—Domestic and Foreign Business Corporations other than realty and holding companies.

Annual Franchise Tax payable on or before March 15.—Domestic and Foreign Real Estate and Holding Corporations, Transportation and Transmission Companies, other than those subject to the so-called income tax.

Annual Franchise Tax Report, Real Estate Holding Corporations, Transportation and Transmission Companies due between January 1 and February 15.—Domestic and Foreign Business Corporations. Form 42 C. T. Section 182 of the Tax Law.

NORTH CAROLINA—Income Tax return due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Report to Industrial Commission due during January.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due during February.—All corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

Annual License Tax Report due during month of February.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due between January 1 and March 1.—Foreign Corporations.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic Corporations, and Foreign Corporations having an office or place of business in the United States.

VERMONT—Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

VIRGINIA—Annual Registration fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also may find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Analysis of Delaware Amendments of 1929. In this especially prepared pamphlet the full text of all provisions, both of the corporation law and the franchise tax law, which were changed by the amendments of 1929 is so presented as to show (1) the law as it stood before amendment; (2) matter repealed; (3) new matter. Then, immediatey following each section changed, is a short, clear explanation of the reason for and effect of the change.

The New Decedent Estate Law of New York. The full text of the law as completely revised by the legislature of 1929, is given in this pamphlet.

What Constitutes Doing Business. (Revised to July, 1928). A pamphlet containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Special Reports. When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations, The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.

Standard Federal Tax Service

The Standard Federal Tax Service enters its seventeenth year of service. Now in four volumes, it adheres steadfastly to its tried and proved reporting methods, with which it incorporated the modern time-saving devices that make the service such an essential and attractive aid to attorney, accountant and taxpayer alike.

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And now a highly developed court decisions reporting system, based on the purchase and scrutiny of the entire output of the Courts, makes possible a wholly new example of speed and coverage. The subscription fee for the Standard Federal Tax Service is seventy dollars for the calendar year 1930.

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